

Message Text

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ORIGIN L-03

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TO AMEMBASSY VIENNA NIACT IMMEDIATE
INFO AMEMBASSY LIMA IMMEDIATE
AMEMBASSY BUENOS AIRES IMMEDIATE

C O N F I D E N T I A L STATE 028755

VIENNA FOR IAEA FOR LABOWITZ AT OPENING OF BUSINESS

E.O. 11652: GDS

TAGS: PARM, TECH, MNUC, IAEA, AR, PE

SUBJECT: NEGOTIATION OF AGREEMENTS FOR TRANSFER OF
U.S.-ORIGIN FUEL TO PERU

REFS: (A) STATE 31092 (B) LIMA 465 (C) VIENNA 609
(D) VIENNA 824 (E) VIENNA 805 (F) VIENNA 822
(G) STATE 22856

1. DEPT PLEASED THAT NEGOTIATIONS WITH ARGENTINA AND PERU
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NOW PROCEEDING SMOOTHLY. WE FIND THE APPROACH OF PREPARING
A SEPARATE PROJECT AND SUPPLY AGREEMENT TO BE ACCEPTABLE.
WITH CERTAIN CHANGES OUTLINED BELOW, WE FEEL THAT THESE
AGREEMENTS CAN BE PRESENTED TO THE BOARD OF GOVERNORS
FOR ITS EARLY CONSIDERATION.

2. WE FIND THE DRAFT TEXT OF THE PERU-IAEA PROJECT AGREE-
MENT (REFTEL E) ACCEPTABLE, WITH FOLLOWING ALTERATIONS:
(A) EVEN THOUGH U.S. NOT PARTY TO PROJECT AGREEMENT, IN
SECTION 3 OF THIS AGREEMENT WE WOULD PREFER THAT THE

FIRST SENTENCE BE CHANGED TO TRACK THE LANGUAGE FOUND IN THE REFTEL A DRAFT QUADRILATERAL AGREEMENT. THE LANGUAGE WOULD READ AS FOLLOWS: "THE GOVERNMENT OF PERU UNDERTAKES THAT NONE OF THE FOLLOWING ITEMS SHALL BE USED FOR THE MANUFACTURE OF ANY NUCLEAR WEAPON OR ANY NUCLEAR

EXPLOSIVE DEVICE OR FOR RESEARCH ON OR THE DEVELOPMENT OF ANY NUCLEAR WEAPON OR ANY NUCLEAR EXPLOSIVE DEVICE, OR FOR ANY OTHER MILITARY PURPOSE."

(B) IN SECTION 6 OF THE AGREEMENT, WE WOULD SUGGEST THAT AFTER THE WORDS "SECTIONS 3 OR 4" THAT THE WORDS "OF THIS ARTICLE" BE ADDED. THIS IS MERELY A STYLISTIC CHANGE WHICH WOULD ADD CLARITY.

(C) AS LONG AS THE AGENCY IS SATISFIED THAT A 30 DAY PERIOD PRIOR TO THE PROPOSED TRANSFER OF THE SUPPLIED MATERIAL IS SUFFICIENT TIME TO ANALYZE THE SAFETY ANALYSIS REPORT REFERRED TO IN PARAGRAPH 2 OF THE SAFETY STANDARDS AND MEASURES ANNEX OF THIS AGREEMENT, WE HAVE NO CONCERN ABOUT CHANGING THE ORIGINAL 60 DAY PERIOD TO 30 DAYS.

3. WITH REGARD TO THE DRAFT SUPPLY AGREEMENT (REFTEL F), DEPT FINDS THIS GREAT IMPROVEMENT OVER EARLIER DRAFT CONFIDENTIAL

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BUT CONSIDERS CERTAIN CHANGES NECESSARY. IN THE SECOND WHEREAS CLAUSE, PLEASE CHANGE THE DATE OF THE CONCLUSION OF THE ARGENTINE-U.S. COOPERATION AGREEMENT TO 25 JUNE 1969.

4. IN SECTION 2 OF ARTICLE I, WE REQUEST RETENTION OF THE LANGUAGE "THE GOVERNMENT OF THE UNITED STATES OF AMERICA SHALL APPROVE THE TRANSFER" RATHER THAN "HEREBY APPROVES". THE REQUIRED MB-10 PROCEDURE REQUESTING TRANSFER APPROVAL CANNOT BE INITIATED UNTIL AFTER CONCLUSION OF QUADRILATERAL AGREEMENT STIPULATING THAT MATERIAL WILL BE SUBJECT TO U.S.-IAEA COOPERATION AGREEMENT.

5. THE FIRST SENTENCE IN SECTION 2 OF ARTICLE I SHOULD END WITH THE PHRASE "PURSUANT TO THE ARGENTINA-U.S. COOPERATION AGREEMENT." A NEW SENTENCE WOULD BE ADDED AT THIS POINT WHICH WOULD READ: "ON TRANSFER TO PERU, THE SUPPLIED MATERIAL SHALL BE SUBJECT TO THE TERMS AND CONDITIONS OF THE U.S.-IAEA COOPERATION AGREEMENT." WE APPRECIATE CARRERA'S CONCERNS AS REPORTED IN REFTEL D, PARA 3(F) BUT BELIEVE THAT QUADRIPARTITE SUPPLY AGREEMENT AS MODIFIED BY THIS CABLE ADEQUATELY PROTECTS ARGENTINE INTERESTS IN FUEL.

6. SECTION 3 OF ARTICLE I SHOULD BE PLACED IN THE ARTICLE V (SAFEGUARDS) AND SHOULD BE AMENDED SO THAT IT

ENDS FOLLOWING THE PHRASE, "OTHERWISE AGREED BY THE PARTIES TO THIS AGREEMENT." THE LANGUAGE FOLLOWING THIS POINT IN THE DRAFT SUPPLY AGREEMENT IS UNCLEAR BUT COULD BE TAKEN TO MEAN THAT THE SUPPLIED MATERIAL COULD BE RETURNED TO ARGENTINA WITHOUT U.S. OR AGENCY

CONSENT. UNDER U.S. POLICY AND ANTICIPATED U.S. NON-PROLIFERATION LEGISLATION, U.S. MUST HAVE RIGHT TO APPROVE ANY RETRANSFER OF U.S.-ORIGIN MATERIAL SUBJECT TO AN CONFIDENTIAL

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AGREEMENT FOR COOPERATION.

7. IN SECTION 5 OF ARTICLE III, WE FIND THE LANGUAGE CONFUSING AND WE SUGGEST THAT THE PHRASE "TO BE DETERMINED SOLELY BY" BE USED IN PLACE OF "EXCLUSIVELY INCUMBENT UPON" IN ORDER TO MAKE THE SENTENCE READ CLEARLY.

8. IN SECTION 9 OF ARTICLE V, WE STRONGLY FAVOR RETURNING TO THE BASIC LANGUAGE USED IN SECTION 1 OF ARTICLE VII OF THE REFTEL A DRAFT AND WHICH WE HAVE SUGGESTED FOR USE IN THE BILATERAL PROJECT AGREEMENT. WE WOULD BE WILLING, HOWEVER, TO CHANGE THE STRUCTURE OF THIS SECTION TO FOLLOW THAT UTILIZED IN ARTICLE V, SECTION 9 OF DRAFT SUPPLY AGREEMENT. THIS PROVISION WOULD THEN READ AS FOLLOWS: "THE GOVERNMENT OF THE REPUBLIC OF PERU GUARANTEES THAT NONE OF THE FOLLOWING MATERIAL SHALL BE USED FOR THE MANUFACTURE OF ANY NUCLEAR WEAPON OR ANY NUCLEAR EXPLOSIVE DEVICE OR FOR RESEARCH OR THE DEVELOPMENT OF ANY NUCLEAR WEAPON OR ANY NUCLEAR EXPLOSIVE DEVICE, OR FOR ANY OTHER MILITARY PURPOSE:

(A) THE SUPPLIED MATERIAL;

(B) ANY SPECIAL FISSIONABLE MATERIAL PRODUCED IN OR BY THE USE OF THE SUPPLIED MATERIAL, INCLUDING SUBSEQUENT GENERATIONS OF PRODUCED SPECIAL FISSIONABLE MATERIAL."

9. A NEW SECTION SHOULD BE ADDED TO ARTICLE V OF THE SUPPLY AGREEMENT INCORPORATING LANGUAGE IN SECTION 7 OF ARTICLE VII OF REFTEL A DRAFT. THE NEW SECTION WOULD READ: "IN THE EVENT THAT THE AGENCY IS FOR ANY REASON UNABLE TO APPLY SAFEGUARDS TO THE PROJECT UNDER THE AGREEMENT BETWEEN THE REPUBLIC OF PERU AND THE INTERNATIONAL ATOMIC ENERGY AGENCY FOR THE APPLICATION OF SAFEGUARDS IN CONNECTION WITH THE TREATY ON THE PRO-CONFIDENTIAL

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HIBITION OF NUCLEAR WEAPONS IN LATIN AMERICA AND THE TREATY ON THE NON-PROLIFERATION OF NUCLEAR WEAPONS OR UNDER SUCH OTHER ARRANGEMENTS AS MAY BE MADE FOR THE IMPLEMENTATION OF THE AGENCY'S RIGHTS AND RESPONSIBILI-

TIES REFERRED TO IN SECTION 4 OF ARTICLE III OF THE AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF PERU AND THE INTERNATIONAL ATOMIC ENERGY AGENCY FOR ASSISTANCE BY THE AGENCY TO PERU IN ESTABLISHING A RESEARCH REACTOR PROJECT, SIGNED , PERU AND THE UNITED STATES, FOLLOWING CONSULTATIONS WITH THE AGENCY AND ARGENTINA, SHALL IMPLEMENT FORTHWITH MEASURES TO VERIFY COMPLIANCE WITH THE UNDERTAKING SET FORTH IN ARTICLE V, SECTION 9." IT IS ESSENTIAL THAT

U.S., IN CONSULTATION WITH OTHER PARTIES TO SUPPLY AGREEMENT, HAVE RIGHT TO ENSURE PERU'S CONTINUING COMPLIANCE WITH ARTICLE V, SECTION 9 UNDERTAKINGS IN EXTREMELY UNLIKELY EVENT AGENCY CANNOT FULFILL THIS ROLE. IT IS OUR UNDERSTANDING IAEA SECRETARIAT APPROVED SIMILAR LANGUAGE IN MEXICO RESEARCH REACTOR AGREEMENT.

10. ANOTHER NEW SECTION SHOULD BE ADDED TO ARTICLE V TO COVER REPROCESSING. THIS SECTION SHOULD READ AS FOLLOWS: "SUPPLIED MATERIAL AND ANY SPECIAL FISSIONABLE MATERIAL PRODUCED THROUGH USE OF THE SUPPLIED MATERIAL SHALL ONLY BE STORED OR REPROCESSED OR OTHERWISE ALTERED IN FORM OR CONTENT UNDER CONDITIONS AND IN FACILITIES ACCEPTABLE TO THE PARTIES. SUCH MATERIAL SHALL NOT BE FURTHER ENRICHED UNLESS SPECIFICALLY PROVIDED BY AN AMENDMENT TO THIS AGREEMENT OR BY A SUBSEQUENT SEPARATE AGREEMENT BETWEEN THE PARTIES."

AGENCY APPEARS TO BE RETREATING FROM POSITION IT TOOK BOTH IN MEXICAN SUPPLY AGREEMENT (FOR OREGON STATE UNIVERSITY REACTOR) AND IN DRAFT SUPPLY AGREEMENT PROVIDED FOR VENEZUELAN FUEL (REF 77 VIENNA 7632 AND 77 VIENNA CONFIDENTIAL

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9761, RESPECTIVELY). IF AGENCY POSITION STEMS FROM FACT THAT IT FEELS AGENCY CANNOT LEGALLY BE A PARTY TO SUCH RIGHTS OF CONSENT, THEN MISSION MIGHT SUGGEST THAT THESE SUPPLY AGREEMENT PROVISIONS BE WRITTEN IN SUCH A WAY AS TO MAKE CONSENT RIGHTS APPLY ONLY TO U.S., ARGENTINA, AND PERU. THE DRAFT SUPPLY AGREEMENT ALREADY INCLUDES SOME OBLIGATIONS THAT DO NOT INVOLVE THE AGENCY (E.G., SECTION 6). FYI: SETTING A PRECEDENT IN THIS CASE FOR US GAINING RIGHTS OF CONSENT OVER REPROCESSING ONLY VIA BILATERAL AGREEMENT WITH RECIPIENT AND NOT VIA MULTILATERAL MECHANISM COULD BE FACTOR IN UPCOMING KRSKO AND LAGUNA VERDE FUEL NEGOTIATIONS. END FYI.

11. AS INDICATED IN PARA 15 OF REFTTEL G, WE REQUEST RETURN TO PHYSICAL PROTECTION PROVISIONS FOUND IN ARTICLE XII OF REFTTEL A DRAFT AGREEMENT. AT END OF FIRST SENTENCE IN ARTICLE VII, SECTION 14, YOU SHOULD

ADD THE FOLLOWING: "WHICH LEVELS MAY BE MODIFIED BY MUTUAL CONSENT OF THE PARTIES WITHOUT AMENDMENT TO THIS AGREEMENT." A THIRD SECTION TO ARTICLE VII SHOULD BE ADDED WHICH WOULD READ: "THE ADEQUACY AND IMPLEMENTATION OF PHYSICAL PROTECTION MEASURES MAINTAINED PURSUANT TO THIS ARTICLE SHALL BE REVIEWED BY THE PARTIES FROM TIME TO TIME AND WHENEVER ANY PARTY IS OF THE VIEW THAT A REVISION MAY BE REQUIRED TO MAINTAIN PHYSICAL PROTECTION."

WE FEEL THAT LEVELS OF PHYSICAL PROTECTION SHOULD BE SUBJECT TO MODIFICATION BY ALL PARTIES IF CONDITIONS CHANGE AND THAT SUCH ACTION SHOULD NOT NECESSITATE AMENDMENT TO PROJECT AGREEMENT. WE ALSO FEEL PHYSICAL PROTECTION MEASURES SHOULD BE REVIEWED WHEN ANY PARTY

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FEELS THAT THIS WOULD BE NECESSARY TO MAINTAIN ADEQUATE LEVELS OF PROTECTION.

12. WE CONCUR WITH THE LANGUAGE FOUND IN SECTION 18 OF ARTICLE IX OF DRAFT SUPPLY AGREEMENT, WITH THE FOLLOWING MODIFICATION, BUT WE STRONGLY FAVOR AT THE BEGINNING OF THAT SENTENCE: "NOTWITHSTANDING THE SUSPENSION OR TERMINATION OF THIS AGREEMENT OR ANY COOPERATION HEREUNDER FOR ANY REASON, ARTICLES V, VI, AND VII SHALL CONTINUE IN EFFECT..." WE FEEL THAT THIS LANGUAGE IS NECESSARY FROM A LEGAL POINT OF VIEW TO INSURE THE SURVIVABILITY OF THE SAFEGUARDS PROVISIONS OF THE PROJECT AND THE SUPPLY AGREEMENTS IN ALL CASES.

13. DEPT HAS HAD DISCUSSIONS WITH IPEN HEAD, GENERAL BARREDA, ON LANGUAGE OF PROPOSED NOTE EXCHANGE AND HAS ANOTHER SESSION SCHEDULED FOR AFTERNOON FEBRUARY 3. PERUVIANS AND DEPT HAVE AGREED TO CONTINUE DISCUSSIONS FOR THE TIME BEING HERE OR IN LIMA ON NOTE EXCHANGE RATHER THAN IN VIENNA.

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<< END OF DOCUMENT >>

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